



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/153484

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 12, 2013, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Waukesha County Health and Human Services in regard to Child Care, a telephonic hearing was held on January 09, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly acted upon petitioner's application for Child Care Benefits (CCB) made on February 21, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Debra Berg, ESS Supv.  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner applied for CCB on February 21, 2013. See Exhibit 1.
3. After processing the required verifications and signature for her application, the agency issued a notice of decision on February 28, 2013 to petitioner informing her that effective February 1,

2013 she was eligible for Child Care in the first step of the process. The notice states, “The second step is for you to get an authorization to approve payment to your provider. The authorization is for the care needed while you are in your approved activity. You may have completed this step by the time you have received this notice. If you have not and you want CC benefits, you must contact the Child Care Specialist at the Child Care administrative agency to receive authorization for services.” Exhibit 2.

4. Petitioner did not perform the second step by getting an authorization to approve payment to a Child Care provider.

### DISCUSSION

Wisconsin Works (W-2) is a comprehensive series of programs designed to assist lower-income households in the transition from public assistance to gainful employment. The W-2 package includes a Child Care subsidy which is intended to allow parents of minor children to hold a job, attend school or participate in a number of other approved activities. See Wis. Stat. §49.155. Wisconsin Shares is the child care subsidy program that helps families pay for child care. An applicant for Child Care must also meet the financial eligibility criteria set forth in Wis. Stat. §49.255(1m). Once an applicant has been found to be eligible, payment of benefits, either directly to the child care provider or by way of reimbursement to the applicant, must be specifically authorized as to the identity of the provider, the approved rate and number of hours and the degree to which the applicant must contribute to the cost of child care.

This appeal concerns petitioner’s request for Child Care Benefits in February 2013. After processing the required verifications for her application, the agency issued a notice of decision on February 28, 2013 to petitioner informing her that effective February 1, 2013 she was eligible for Child Care in the first step of the process. The notice states, “The second step is for you to get an authorization to approve payment to your provider. The authorization is for the care needed while you are in your approved activity. You may have completed this step by the time you have received this notice. If you have not and you want CC benefits, you must contact the Child Care Specialist at the Child Care administrative agency to receive authorization for services.” Exhibit 2. The Child Care Authorization is a separate document which is specifically identified as such and which sets forth the number of hours and the hourly and/or weekly rate of payment that the county agency has approved and authorized.

Petitioner testified that she was told verbally that she could send her child to a specific provider and that she did so. There were then attempts to see why that provider was not getting paid, and then a finding that this certain provider was not participating in the YoungStar program<sup>1</sup>. To this end, the petitioner is at the mercy of the *provider* who chooses, or not, to participate in the YoungStar program and who completes and submits an application for same. However, the agency’s notice was issued properly and it identified that it was *petitioner’s duty* to request the authorization. While she argues that she was *told* she could use this provider, she did not receive any written authorization for it. She is essentially making an equitable argument based on uncorroborated hearsay that she got a verbal authorization. However, it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Based on these facts, the agency was acting according to policy. As such, I must find that the agency

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<sup>1</sup> On June 23, 2010 the Wisconsin Legislature’s Joint Finance Committee approved YoungStar. YoungStar is the program that ties the rate of Wisconsin Shares reimbursement to the level of child care quality. To receive Wisconsin Shares payments, providers (except licensed day camps) must participate in YoungStar as of July 1, 2012.

acted correctly. There is nothing by way of this decision that bar the parties from resolving this issue should the provider's YoungStar application be approved and backdated.

### **CONCLUSIONS OF LAW**

The agency correctly acted upon petitioner's application for Child Care Benefits (CCB) made on February 21, 2013.

**THEREFORE, it is**

### **ORDERED**

That the petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

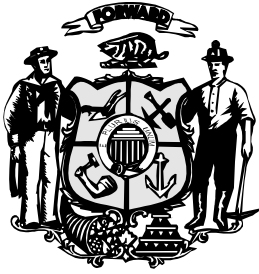
### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400. The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of February, 2014

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s/Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 6, 2014.

Waukesha County Health and Human Services  
Child Care Benefits